

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CHARLES E. HILL,

Plaintiff,

ORDER

v.

13-cv-767-wmc

DR. CHARLES HUIBREGTSE, *et al.*,

Defendants.

State inmate Charles E. Hill filed a proposed civil action under 42 U.S.C. § 1983, alleging that he was denied medical care while incarcerated at the Redgranite Correctional Institution. Hill was granted leave to proceed *in forma pauperis* and he paid an initial partial filing fee as required by the Prison Litigation Reform Act, 28 U.S.C. § 1915(b). On April 4, 2014, the court denied Hill's request for leave to proceed further unless he submitted evidence demonstrating that he exhausted his administrative remedies in compliance with prison procedures as required by 42 U.S.C. § 1997e(a). Hill has now filed a motion to withdraw his complaint. He also requests a refund of his initial partial filing fee.

The court construes Hill's motion as a request for voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A), which allows dismissal upon the plaintiff's request before the opposing party serves either an answer or a motion for summary judgment. Because no responsive pleading has been requested or received in this case, the motion will be granted and the case will be dismissed without prejudice. *See Smith v. Potter*, 513 F.3d

781, 782-83 (7th Cir. 2008) (observing that a plaintiff's motion for voluntary dismissal filed before the opposing party serves either an answer or dispositive motion automatically effects dismissal of the case); *see also Nelson v. Napolitano*, 657 F.3d 586, 587-88 (7th Cir. 2011) (discussing the effect of a voluntary dismissal under Rule 41(a)) (collecting cases). Because the full amount of the filing fee was due when his complaint was filed, however, the court must deny Hill's request for a refund of his initial partial filing fee.

ORDER

IT IS ORDERED that:

1. The motion for voluntary dismissal filed by plaintiff Charles E. Hill (Dkt. #9) is GRANTED; Hill's request for a refund of the filing fee is DENIED.
2. The complaint is DISMISSED without prejudice pursuant to Fed. R. Civ. P. 41(a).

Entered this 17th day of September, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge